



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

October 27, 2014

Jessica Rentto
Associate Vice President, Administration
Business and Financial Affairs
San Diego State University
5500 Campanile Drive
San Diego, CA 92182-1620

(In reply, please refer to case no. 09-13-2323)

Dear Ms. Rentto:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against San Diego State University (University). The complaint alleged that the University discriminated against persons with disabilities because it excluded individuals with mobility impairments from University programs and activities because some locations on its campus are not physically accessible, and because the University failed to designate a person or persons to coordinate its compliance with Section 504 and Title II of the Americans with Disabilities Act.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 and their implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by certain public entities. The University receives Department funds, is a public education system, and is, therefore, subject to the requirements of Section 504, Title II, and their regulations.

OCR reviewed evidence obtained from the complainant and University staff and from documents and records provided by both parties. OCR concluded that there was sufficient evidence to support a conclusion of noncompliance with Section 504, Title II, and their implementing regulations because barriers to access existed which served to exclude individuals with disabilities from some of the programs and activities at the University. The applicable legal standards, the facts obtained during the investigation, and the reasons for the determinations are summarized below.

Legal Standards

The program accessibility requirements of the Section 504 implementing regulations are found at 34 C.F.R. §§104.21-104.23; comparable sections of the Title II implementing regulations are found at 28 C.F.R. §§35.149-35.151. Both 34 C.F.R. §104.21 and 28 C.F.R. §35.149 provide that no qualified person with a disability shall, because a university's facilities are inaccessible to or

unusable by disabled persons, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program of activity of the university.

The Section 504 regulations, at 34 C.F.R. §104.22, and the Title II regulations, at 28 CFR §35.150, apply to “existing facilities”, defined as any facility or part of a facility where construction was commenced prior to June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that, with respect to existing facilities, the university shall operate its programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities.

Accessibility of existing facilities is determined not by compliance with particular architectural accessibility standards, but by considering whether a program or activity in the facility, when viewed in its entirety, is accessible to and usable by individuals with disabilities. However, in evaluating existing facilities, facility accessibility standards such as the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or the Uniform Federal Accessibility Standards (UFAS) may be used as a guide to understanding whether persons with disabilities can participate in the program, activity or service.

The university may comply with the existing facility standard through the reassignment of programs and activities to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs and activities accessible to disabled persons. The university is not required to make structural changes in existing facilities where other methods are effective in achieving compliance. In choosing among available methods, the university must give priority to those methods that offer programs and activities to disabled persons in the most integrated setting appropriate.

Section §104.22(f), also requires the university to adopt and implement procedures to ensure that, as to existing facilities, interested persons can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities. The Title II implementing regulations, at 28 C.F.R. §35.163(a), has similar requirements.

Section 104.23 of the Section 504 regulations, and §35.151 of the Title II regulations, are applicable to “new construction or alterations”, defined as any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that each facility or part of a facility constructed by, on behalf of, or for the use of the university shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities. The regulations further provide that each facility or part of a facility altered by, on behalf of, or for the use of the university in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities.

The regulations specify the standard to be used in determining the accessibility of new construction and alterations. Under the Section 504 regulations, at 34 C.F.R. §104.23(c), the minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991, is the American National Standards Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped (ANSI 117.1 – 1961 [1971]). The

minimum standard for determining accessibility of facilities constructed or altered on or after January 18, 1991 is the UFAS. The Title II regulations, at 28 C.F.R. §35.151(c), delineate UFAS or the 1991 Standards as a minimum standard for determining accessibility for facilities constructed or altered on or after January 26, 1992 and on or before September 15, 2010. For facilities constructed or altered on or after September 15, 2010 and before March 15, 2012, the minimum standard for determining accessibility may be UFAS, the 1991 Standards, or the 2010 Standards (the 2010 ADA Standards for Accessible Design, which consist of the 2004 ADAAG [appendices B and D to 36 C.F.R. part 1191] and the requirements contained in 28 C.F.R. §35.151). The minimum standard for facilities constructed on or after March 15, 2012 is the 2010 Standards. Both sets of regulations provide that universities may depart from the particular requirements of these architectural standards if equivalent or greater access and usability is provided.

Investigative Findings

The OCR complaint arose from a concern about a general lack of awareness and lack of responsiveness on the part of the University with respect to accessibility problems on campus. The complaint also alleged that the University failed to designate a person or persons to coordinate its compliance with Section 504 and Title II. As examples of ongoing accessibility problems, the complaint alleged that the campus lacks adequate notice of the accessible paths of travel throughout the campus and how to locate the accessible entrances of buildings, particularly in construction areas; that there are barriers in the paths of travel to various areas of campus; and that there is a lack of available accessible parking in the interior of the campus. The complaint provided examples of five different areas or buildings on the campus that presented these and other types of barriers and obstacles to facility access, including a lack of accessible door hardware, elevators, and restrooms; steep pathways; and narrow and obstructed circulation paths.

- OCR found that the University has designated individuals who are responsible for ensuring the University is in compliance with Section 504 and Title II of the ADA – both to field requests for accommodations, academic adjustments and auxiliary aids; and to oversee the provision of facility and physical access. The University’s ADA Coordinator, who is also the Director of Student Disability Services, is responsible for ensuring that program and physical access are provided for individuals with disabilities. OCR found that the University maintains and publishes on its website specific procedures for faculty and staff and, separately, for students to follow in order to request disability related accommodations and assistance, and provides a grievance process for any complaints of unlawful discrimination.
- The University campus is built on a mesa on terrain that is sloped and uneven. The buildings alleged to present barriers to accessibility were constructed between 1932 and 1964, prior to Section 504 becoming effective law. The University witnesses interviewed by OCR uniformly agreed the biggest challenge in providing accessible routes, even inside the buildings, is the topography of the land. Some of the buildings are built into the slope and not all entrances are approached by a level path depending on which side of the building an individual enters. Some of the buildings have split level floors or sunken floors and, in some instances where levels are not vertically aligned, it is not possible to provide direct access to all levels through a feature like an elevator.

- Pursuant to California State University Executive Order 926, the University convenes a Campus Disability Access and Compliance Committee made up of faculty, students and staff. The committee's purpose is to periodically update and respond to events and conditions involving physical accessibility. During the 2013-2014 school year, the committee discussed the need to strategically and proactively address and respond to campus accessibility needs, communicate the University's accessible features and barriers to access to the University community, and review the University's 2008 ADA Transition Plan.
- The University informed OCR that when faculty, staff, students or other University community members raise requests and concerns about physical access, they have thus far been able to resolve them by contacting the University's Facilities Department or arranging for program access. However, OCR found that the University does not currently have an established mechanism that would enable it to proactively identify and remove barriers to accessibility or a means of tracking and providing notice of new accessible features. University administrators informed OCR that the current mechanism for addressing barriers to physical access is when they are reported by members of the University community.
- The complaint alleged that an individual with a disability must locate the accessible route around and through the campus through a trial and error approach. Currently, the University posts a static accessibility map, copyrighted in 2012, on its website that has some basic information about where disabled parking is located on campus, the accessible routes, and the pickup locations for cart service. The map also indicates where access is not advised because the slope of the route is greater than the 5% grade required in the 2010 Standards for Accessible Design (2010 Standards). The University has identified key entry ways to and throughout each building, but witnesses agree a more detailed accessibility map would allow an individual who needed access to plan their route ahead of time.
- During OCR's on site investigation, OCR did observe signage on the exterior of the building entrances indicating which entrances were accessible. Potentially, however, individuals must first arrive at an inaccessible entrance in order to read the signage directing the person to the accessible entrance. In addition, depending on the path of travel to the building, an individual would have to cross some travel hazards such as slopes greater than the 5% threshold identified in the 2010 Standards. OCR did not identify signage on the paths of travel throughout the campus that indicate accessible routes to the different areas of the University.
- Another challenge creating barriers to the accessible routes, and occasionally to accessible parking, is construction occurring on campus. The University is undergoing a large scale steam line infrastructure improvement project that blocks off some routes on campus and creates some unstable and rough ground surfaces; and surrounding parking areas have been used to store construction materials. These barriers are temporary but also constantly changing. The construction occurs at night to minimize the impact on the day students. Each night a portion of the steam line is dug up, and metal plates are placed on top to create a path of travel during the day. Sometimes the metal plates do not line up on grade and create a trip hazard that exceeds the 2010 Standards. The construction impacts the accessible parking spaces located on the interior of the campus and creates barriers during the low light conditions in the evening.

The University's Director of Construction in Facilities Planning is in charge of notifying the public about construction. The University provides some notice of construction on its campus map, and its notification methods include email, signage providing 72 hour notice if an entire parking lot will be closed, and occasional articles in the "Construction Beat" section of the student newspaper, but witnesses stated that the notice is not regular or consistently provided.

- The main parking areas at the University are parking facilities along the exterior of campus. A review of the parking facilities on the path of travel to the buildings raised in the OCR complaint shows that the University maintains a sufficient number of accessible parking spaces under the 2010 Standards. The University also has individual parking spaces on the interior of the campus that are either designated accessible parking spaces or special permit only spaces (e.g., spaces reserved for administrators). The allegation in the complaint was that sometimes the individual accessible parking spaces in the interior of campus are sometimes either full or blocked by delivery trucks or construction.
- As to the specific buildings identified by the complaint, OCR found that individuals would be able to access the programs, activities and services within these buildings under the program access standard. The University showed OCR examples of structural changes made to provide program access such as providing fully accessible men's and women's restrooms on the path of travel to the accessible seating area of the campus theatre. In another building, constructed in 1960, OCR found that while a specific single use restroom was not accessible, the facility had accessible restrooms on the first floor accessible by taking the elevator one level up. OCR's investigation showed that all the buildings identified in the complaint had at least one power assisted accessible entrance and that the University had installed multiple push plate door actuators around some of the buildings, exceeding the requirements of the 2010 ADA Design Standards. OCR also observed that the University made several changes to increase the accessibility of circulation paths in the faculty club, food court, and University book store prior to OCR's visit, and provided notice to operations managers about their responsibility to maintain clear circulation paths.
- OCR did identify a concern that some of the elevators in one building described in the complaint were out of service. The University demonstrated that it provided signage that the elevators were out of service, the accessible route to an alternate elevator bank, and a projected date for operation. OCR observed that an individual would have to arrive at the out of service elevator to learn where to find the operating elevator. Also, while the University provided OCR with a legitimate justification for the delay in repairing the elevator - that the delay was due to the availability of a specific elevator part - the projected dates of operation on the signs were past due which was misleading to individuals needing those elevators for access.

Analysis

For existing facilities, Section 504 and Title II require that an institution operate its program so that, when viewed in its entirety, it is readily accessible to persons with disabilities (program accessibility standard). Under this standard, recipients are not required to make all existing facilities or every part of a facility accessible, as long as the program or activity provided at the facility is readily accessible to persons with disabilities. See 34 CFR 104.22 and 28 CFR 35.150. Program accessibility

for existing facilities can be met through such means as redesign of equipment, alterations of existing facilities, or reassignment of classes or other services to accessible buildings.

In the investigation of this complaint, OCR reviewed the five campus buildings that were alleged to have inaccessible components and paths of travel at the University. All of the buildings identified in the complaint were designed and constructed prior to June 3, 1977. Therefore, these facilities are subject to the “existing facilities” standards of the regulations and are not required to meet the current accessibility design standards. While the University must make programs in those facilities accessible to individuals with disabilities, it is not required to physically alter or reconstruct them. The University may utilize other methods which make a given program accessible to and usable by individuals with disabilities, and/or may make structural alterations to do so. OCR found that the buildings reviewed had functionally accessible approaches to and through them and at least one accessible entrance, including accessible door hardware, accessible restrooms, and accessible parking. However, the signage and accessibility map are not sufficiently detailed as to provide ready guidance to an individual seeking the accessible path of travel to the buildings.

With respect to the complaint allegation about parking in the interior of the campus, the 2010 Standards do not obligate the University to provide the same number of accessible parking spaces as there are placard holders, and the University provided OCR with examples of individual accommodations made to provide parking on the interior of campus in response to requests from faculty and students with disabilities. The University’s Public Safety Office, which oversees parking, provided OCR with documentation of its parking enforcement log with respect to citations issued for unauthorized parking in a designated accessible parking space.

The campus terrain is a challenging environment for maintaining accessible paths of travel. OCR found a lack of adequate signage and information about accessible paths of travel on the campus generally. In addition, not all University staff were informed of their responsibility to maintain the necessary clear width and turning space on accessible routes and circulation paths. OCR also observed how unfixed objects obstructed the clear space on an accessible route (e.g. a large garbage receptacle in the turning space of a single use toilet room).

The University’s practices indicate that administrators and Facilities Services have been responsive to individual requests or notice of a barrier by removing the particular barrier or providing alternative access. However, generally, a student, staff or faculty member must bring a request or notify the University of a barrier to access in order for the University to become aware of accessibility problems. The result is that the burden of overcoming campus barriers rests with individuals from the campus community to report them.

OCR finds concern with the University’s lack of a method to ensure that it is aware of and takes steps to address and remedy barriers to access apart from responding to individual complaints. 34 C.F.R. part 104, Appendix A. Section 504 and Title II establish an affirmative duty to make University services and facilities accessible to students with disabilities, and the failure to do so

constitutes discrimination.³ While students without mobility impairments can freely access campus programs, facilities and other features despite the unique and challenging topography, because of insufficient signage and other information, students with mobility impairments must use a trial and error system of locating the accessible path of travel or attempt to identify the accessible path of travel through a very basic online accessibility map. While the University has an ADA Transition Plan, there is no coordinated tracking system for identifying barriers and having them removed, prioritizing accessibility construction, or otherwise using the Transition Plan in a way that would strategically improve facilities and program access on the campus.

In summary, OCR concludes that there is sufficient evidence to support a finding of noncompliance with respect to the allegation that the University excluded persons with disabilities from participation in the University's programs or activities because of the accessibility problems explained above. OCR concludes that there is insufficient evidence to support a finding of noncompliance with respect to the allegation that the University does not designate an individual to coordinate its compliance with Section 504 and Title II of the ADA.

In order to address the noncompliance issues identified by OCR in this investigation, the University, without admitting to any violation of law, has voluntarily agreed to the terms of the enclosed Resolution Agreement. OCR concludes that the actions agreed to by the University in the enclosed Resolution Agreement will resolve the compliance issues in this case and OCR will monitor the implementation of the Agreement. As a matter of technical assistance, OCR also recommends that the University provide regular notice to facilities maintenance, staff, and faculty to ensure that the circulation paths are kept barrier free from intrusions and protrusions such as trash cans, or other unfixed objects that can impede on the clear space.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

This letter is a resolution letter issued by OCR to address an individual OCR case. Resolution letters contain fact-specific investigative findings and dispositions of individual cases. Resolution letters are not formal statements of OCR policy and they should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

³ The 2008 amendments to the ADA (ADAAA) do not address the enforcement of the original ADA's requirement for recipients to continually re-visit their ADA Transition Plan to remove barriers to physical access. However, the ADAAA is clear that physical access is an affirmative duty.

OCR would like to thank the University for its commitment in the Agreement to ensuring physical access for individuals with disabilities. If you have any questions, please contact Tammi Wong, Civil Rights Attorney, at (415) 486-5564.

Sincerely,

/s/

James M. Wood
Team Leader

Enclosure